

# INTEROFFICE MEMO

**DATE:** September 19, 2002  
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**TO: Honorable Planning Commission**

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**SUBJECT:** ORDINANCE TO AMEND TITLE 8 OF THE SAN BERNARDINO COUNTY CODE  
RELATIVE TO ACCESSORY WIND ENERGY SYSTEMS.

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On July 25, 2002, an ordinance to amend the County Development Code relative to accessory wind energy systems was presented to the Planning Commission. Due to concerns expressed by the public and Planning Commissioners concerning noise, height, color, parcel size, and setbacks, the Commission continued the item so that these issues could be further addressed by staff.

The following is staff's analysis of and recommendation for each issue:

**Noise:** Concerns were brought up by property owners regarding the permitted noise levels that the ordinance allows. Staff has determined that the noise level generated by these small wind energy systems is not an issue of significance. The small wind energy systems meet our current noise standards as defined in Division 7 of the County Code. The current county standards are:

- Day: average of 55 dBa
- Night: average of 45 dBa.

Staff does recommend, however, that the language that was included in AB1207 be added to the noise provision. The subsection will now read as follows:

- “(i) The noise performance standards of Division 7 of this Title shall apply except during short-term events such as utility outages and severe wind storms.”

**Height:** Concerns were brought up by property owners regarding the height of the wind energy system. Interest in increasing the heights of the windmills for greater energy production was expressed. Staff believes the increased heights that are currently being proposed in the ordinance are sufficient to meet the needs of the consumer while keeping the aesthetic impact at a minimum. The table shown below provides a comparison of the height allowances authorized by recent state law (AB 1207), existing Development Code provisions and the changes proposed in the new ordinance.

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## TOWER HEIGHTS

State Law	Current Provisions	Proposed Ordinance
Non-Urbanized Area Only: 1 to <5 acres: 65 ft. 5 acres and above: 80 ft.	RS/RM: 52.5 ft. RL and all other districts: 65 ft.	RS/RM: 52.5 RL: 65/65/80* RL-5, AG, RC: 80/80/120* All others districts: 65/65/80* (or max. height of the LUD if higher) *Valley/Mtn/Desert

The proposed ordinance provides varying tower heights according to the land use district designations and County Regions. In the Valley and Mountain Regions for RL, RL-5, AG, and RC, we are proposing the standards that are set by state law. In the Desert Region, we are recommending a tower height of 80', an increase of 15' over state law in the RL Land Use District. In RL-5, AG and RC in the Desert Region, we are recommending a tower height of 120', a 40' increase over state law. The height standards for all commercial and industrial land use districts shall be as indicated in the table above.

Those individuals wishing to install a small wind energy system taller than the permitted height can apply for a minor variance, which, if approved, would increase their tower height up to 30%. Such requests warrant a review through a variance process, which then can be evaluated as is provided for in the variance procedure. This would provide for maximum tower height as shown below:

- 65 ft tower could increase to 84.5 ft
- 80 ft tower could increase to 104 ft
- 120 ft tower could increase to 156 ft

State law focuses on permitting windmills in non-urbanized areas and does not address urbanized areas. Questions were raised at the July 25<sup>th</sup> hearing concerning having windmills in urbanized areas as currently allowed by the County Development Code. The height standard is 52.5'. The original ordinance proposed on July 25<sup>th</sup> would prohibit windmills in urbanized areas. Since that time staff has re-evaluated its position regarding windmills in urbanized areas. Staff has amended the proposed ordinance to maintain the current County Development Code standard of 52.5' without distinguishing between urbanized or non-urbanized areas. Staff does have a reservation about the compatibility and practicality of a windmill in an urban setting. Other types of renewed energy resources are available, such as solar energy, that would be more compatible in an urban setting.

**Color:** Concerns were brought up regarding the color standards proposed in the draft ordinance. During public comment, some commentators stated that they liked the colors of the wind turbine and camouflaging would not help aesthetically. Staff believes the aesthetic impact issue is still important but can be mitigated by requiring the turbines to be painted a color that blends with the surrounding area. Staff has reconsidered the

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original proposed standard and is now recommending that the color of gray be used as a “neutral color” that will best blend with a variety of settings and backdrops. The new proposed text reads:

- “(f) Accessory wind energy systems’ rotors and turbines shall be gray in color to better blend with the predominant viewing background, except when such treatment does not comply with Federal Aviation Administration (FAA) requirements.”

**Setbacks:** Concerns were brought up regarding the setback requirements proposed by staff. Interest was expressed in having the setback requirements reduced in order to have greater flexibility with the placement of the windmill. Current setback standards in the County Development Code are 125% of the tower height from the property line. Staff proposes that the setback requirements outlined by State Law should be required. This would be 100% of the tower height from the property line as opposed to the 125% currently required. With an approved minor variance, the setback would be reduced by 40% in front and side yards, and by 30% setback for the rear yard. Again the individual unique circumstances of a particular applicant can be addressed by the variance procedure.

**Turbine Approval:** Concerns regarding turbine approval by the California Energy Commission (CEC) were raised. These concerns were in regard to reasons for approval and limits placed on turbine size. Staff contacted the CEC directly and learned that, turbine approval is required to ensure reliability and safety of the turbines used. Staff was also informed that the State Legislature is considering new legislation (SB 1038) which will allow small wind energy systems to have turbines up to 50 kilowatts instead of the current limitation of 10 kilowatts. Therefore, the requirement for the system's turbine to be approved by the California Energy Commission or certified by a national program recognized and approved by the Energy Commission should remain in the ordinance.

The proposed revisions to the July 25<sup>th</sup> version of the ordinance are attached in a redline version along with a copy that incorporates changes in the final form.

**FINDINGS:**

1. An initial study was prepared for the proposed amendment, and it concludes that the proposed ordinance would have a less than significant impact on the environment with mitigation measures included within the ordinance and that a Negative Declaration should be prepared.
2. The proposed Development Code Amendments are consistent with the goals and policies of the General Plan.

**RECOMMENDATION:**

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Staff recommends that the Planning Commission make the following recommendations to the Board of Supervisors:

- A. ADOPT the proposed Development Code Amendments by ordinance.
- B. ADOPT the findings as contained in the staff report.
- C. ADOPT a Negative Declaration.
- D. FILE a Notice of Determination.

ATTACHMENTS:

- 1. Proposed Ordinance with Annotated Changes
- 2. Proposed Development Code Amendment Ordinance
- 3. Comment Letters
- 4. SB 1038 (Pages 29-30)